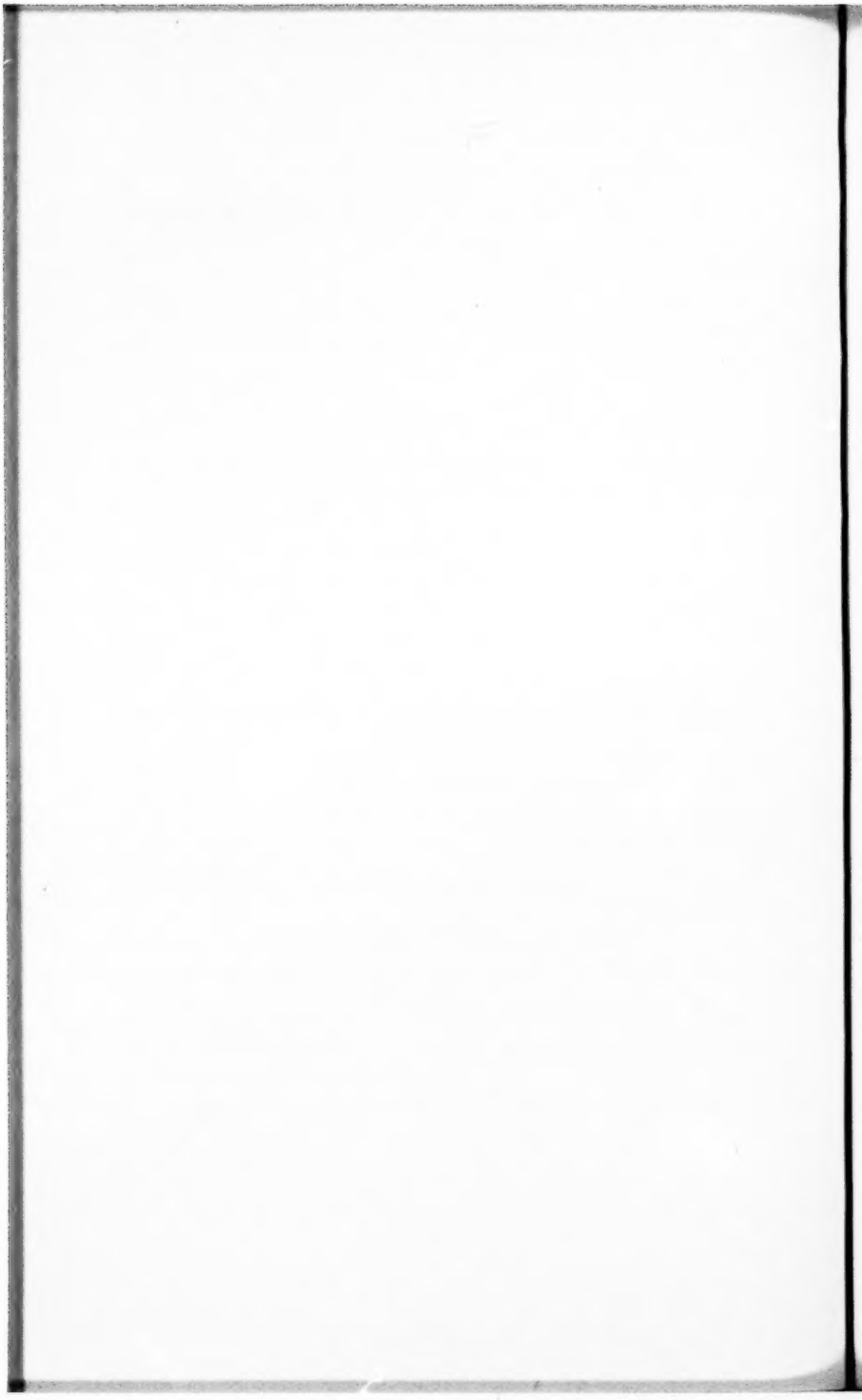

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. .....

MARY E. CHEWNING, *Petitioner*,

v.

THE DISTRICT OF COLUMBIA, A MUNICIPAL CORPORATION, GARNISHEE, *Respondent*.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

THE OPINION OF THE COURT BELOW.

The opinion of the United States Court of Appeals for the District of Columbia (R. 8-10) is reported in

II.

JURISDICTION.

1. The opinion of the United States Court of Appeals for the District of Columbia is dated April 14, 1941 (R. 8).

2. The United States Court of Appeals for the District of Columbia in sustaining the judgment of the District

Court of the United States for the District of Columbia, held that the District of Columbia, a municipal corporation, was not subject to the ordinary rules of garnishment proceedings in effect in the District of Columbia.

3. The United States Court of Appeals for the District of Columbia, in its construction of the Act of 1871 incorporating the District of Columbia, in Section 2, Title 20, of the D. C. Code of 1929, ignored its own decisions and applicable decisions of this Court in holding that the District of Columbia, as a corporation, is not subject to the ordinary rules covering garnishment proceedings.

4. The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

III.

STATEMENT OF THE CASE.

A full statement of the case has been given under the heading "STATEMENT OF THE CASE" in the Petition, and, in the interest of brevity, the statement is not to be repeated at this point.

IV.

SPECIFICATION OF ERRORS.

1. The United States Court of Appeals for the District of Columbia erred in holding that Congress did not intend that the District of Columbia would be subject to garnishment.

2. The United States Court of Appeals for the District of Columbia erred in its construction of the Act of 1871 creating the District of Columbia.

3. The United States Court of Appeals erred in sustaining the action of the District Court of the United States for the District of Columbia.

V.

ARGUMENT.

The United States Court of Appeals for the District of Columbia Erred in Holding that Congress did not Intend that the District of Columbia Would be Subject to Garnishment.

The record in this case discloses that the respondent in the Courts below filed no pleading covering the merits of the cause of action but relied entirely upon the fact that the District of Columbia was a municipal corporation and exempt from garnishment proceedings for the collection of a private judgment. In the act of Congress of 1871, creating the District of Columbia, being Section 2, Title 20, of the D. C. Code of 1929, is the following:

> "Sec. 2. The District is created a government by the name of the District of Columbia, by which name it is constituted a body-corporate for municipal purposes, and may contract and be contracted with, sue and be sued, plead and be impleaded, have a seal, and exercise all other powers of a municipal corporation not inconsistent with the Constitution and laws of the United States and the provisions of this title."

The question of the status of the District of Columbia has been before the United States Court of Appeals for the District of Columbia and in this Court on a number of occasions, and it has been held that the District of Columbia should be placed in the same category as a private person. It came before this Court for the first time in the case of *Metropolitan Railroad Company* v. *The District of Columbia*, 132 U. S. Page 1, decided October 21, 1889, and in which this Court said:

> "The first question, therefore, will be, whether the District of Columbia is, or is not, a municipal body merely, or whether it has such a sovereign character, or is so identified with or representative of the sovereignty of the United States as to be entitled to the prerogatives and exemptions of sovereignty."

and in answering this question the Court, at Page 9, said:

> "We are clearly of opinion that the plaintiff is a municipal corporation having a right to sue and be sued, and subject to the ordinary rules that govern the law of procedure between private persons."

The Court of Appeals for the District of Columbia, in the case of *Croson* v. *District of Columbia,* 55 Apps. D. C., 122, said:

> "The District of Columbia, as a municipal corporation, has the right to sue and be sued, but it possesses no sovereign power. * * * Its supreme legislative body is Congress. * * * The authority of Congress, as the Legislature of the District, is plenary."

It is very apparent from the foregoing decisions that the District of Columbia derived no sovereign power from the Act of Congress creating the District of Columbia, and the only question presented is whether or not under these circumstances the District of Columbia may be garnisheed for a private debt due from one of its employees.

Your petitioner in the Courts below relied upon the case of *Federal Housing Administration* v. *Burr,* 309 U. S., 242, 60 Supreme Court Reporter, P. 488, and decided February 12, 1940, in which this Court granted certiorari to review a judgment of the Supreme Court of Michigan. In this case garnishment proceedings were instituted against the Federal Housing Administration in accordance with the law of the State of Michigan, and the Federal Housing Administration contended that it was immune from garnishments of this kind, and this Court said at Page 244:

> "Since consent to 'sue and be sued' has been given by Congress, the problem here merely involves a determination of whether or not garnishment comes within the scope of that authorization. No question as to the power of Congress to waive the governmental immunity is present. For there can be no doubt that Congress has full power to endow the Federal Housing Administration with the Government's immunity from suit, or to determine the extent to which it may be subjected to the judicial process. * * *"

and again at Page 245:

> "Hence, when Congress establishes such an agency, authorizes it to engage in commercial and business transactions with the public, and permits it to 'sue and be sued,' it cannot be lightly assumed that restrictions on that authority are to be implied. Rather, if the general authority to 'sue and be sued' is to be delimited by implied exceptions, it must be clearly shown that certain types of suits are not consistent with the statutory or constitutional scheme, that an implied restriction of the general authority is necessary to avoid grave interference with the performance of a governmental function, or that for other reasons it was plainly the purpose of Congress to use the 'sue and be sued' clause in a narrow sense."

The Court then said this:

> Clearly the words 'sue and be sued' in their normal connotation embrace all civil process incident to the commencement or continuance of legal proceedings. Garnishment and attachment commonly are part and parcel of the process, provided by statute, for the collection of debts. * * * But however it may be denominated, whether legal or equitable, and whenever it may be available, whether prior to or after final judgment, garnishment is a well-known remedy available to suitors. To say that Congress did not intend to include such civil process in the words 'sue and be sued' would in general deprive suits of some of their efficacy. Hence, in absence of special circumstances, we assume that when Congress authorized federal instrumentalities of the type here involved to 'sue and be sued' it used these words in their usual and ordinary sense."

The District of Columbia stands in no different light than the Federal Housing Administration, Reconstruction Finance Corporation and others. They derive their power and authority from Congress, and the 'sue and be sued' clause should receive the same interpretation whether it referred to the District of Columbia or the Federal Housing Administration.

The United States Court of Appeals for the District of Columbia, in its opinion, states (R. 9-10) that in 1893 it decided the case of *Columbia Brick Company v. The District of Columbia*, 1 App. D. C., and held that the District was not subject to garnishment. The *Columbia Brick Company* case was a suit in equity, brought in the then Supreme Court of the District of Columbia against the District of Columbia to require it to retain any money it owed to Columbus Thomas, a general contractor, by reason of the contract to build a school house in the District of Columbia, to which the Columbia Brick Company had delivered materials. It was based upon Section 709 of the Revised Statutes relating to the District of Columbia, giving a sub-contractor the right to garnish or give notice to the owner of a building of his claim against his employer, and the Court did indirectly hold, while not necessary to a decision in that case, that the District of Columbia was not liable to garnishment proceedings, and stated at Page 356 the following:

> "But the great weight of authority is decidedly against allowing any garnishment or attachment at all in the hands of municipal corporations. It is not supposed to be within the contemplation of the legislature, unless expressly provided, because of its great inconvenience and embarrassment, and, therefore, against public policy."

The same reasoning was used by the United States Court of Appeals in the case of *McCarthy* v. *United States Shipping Board Merchant Fleet Corporation*, 60 Appeals, 311, in which it held that the Merchant Fleet Corporation was not subject to garnishment, it being contended in that case that the corporation had been liable to be sued in certain cases upon its contracts and torts like a private corporation, and accordingly could not claim to be exempt from garnishment as a public agency, but the Court said:

> "This conclusion, however, is not warranted, for such an agency may be permitted by law to 'sue and be sued' upon its obligations without being subjected

to attachment or garnishment in cases unrelated to its own duties or liabilities."

The question of public policy was referred to in the case of *Federal Housing Administration* v. *Burr*, at Page 249, wherein it stated that petitioner urged consideration of policy against the conclusion of the Court and stressed the heavy burden which would be imposed on such governmental instrumentalities if garnishment were permitted and concluded that if immunity of public bodies from garnishment is to be abrogated, it should be done by legislation, so that the remedy could be appropriately molded to fit the needs of the government, and this was answered by this Court at Page 249, as follows:

> "In our view, however, the bridge was crossed when Congress abrogated the immunity by this 'sue and be sued' clause. And no such grave interference with the federal function has been shown to lead us to imply that Congress did not intend the full consequences of what it said. Hence, considerations of convenience, cost and efficiency which have been urged here are for Congress which, as we have said, has full authority to make such restrictions on the 'sue and be sued' clause as seem to it appropriate or necessary."

Under Title 24, Section 286 of the Code of Laws for the District of Columbia, complete to 1929, an attachment may be levied upon the judgment debtor's goods, chattels and credits and interrogatories accompany the attachment, which must be answered within ten days, and the salary of an individual is subject to attachment and garnishment.

The District of Columbia is not exempt in any way from the benefits or the requirements of the foregoing Act, with the exception that the retirement salary of the teachers for the District of Columbia is referred to in Title 7, Section 77, of the Code of Laws for the District of Columbia, complete to March 4, 1929, as follows:

> "None of the money mentioned in this Chapter shall be assignable, either in law or equity, or be subject to execution or levy by attachment, garnishment, or other legal process."

from which it may be reasonably assumed that Congress intended that all other salaries of the employees of the District of Columbia were subject to execution, attachment or garnishment.

Had the judgment debtor in this particular case assigned her wages to your petitioner, and the District of Columbia had refused to honor this assignment, surely the District of Columbia would be subject to a direct suit for the amount of the assignment in the same manner as it would from the judgment debtor, in the event of its failure to pay the salary due. There have been a number of suits filed by the employees of the District of Columbia on alleged wage claims, such as *District of Columbia* v. *Selden*, 63 Apps. D. C. 40, 68 Fed. (2nd) 988, and *District of Columbia* v. *Smith*, 63 Apps. D. C. 363, 72 Fed. (2nd) 735.

The United States Court of Appeals stated in its opinion (R. 10), the following:

> "By keeping the Statute of 1871 in force for seventy years, and reenacting it after the courts had repeatedly decided that it did not subject the District to garnishment, Congress has in effect ratified the decisions."

The mere fact of the continued inactivity of Congress on this particular subject does not raise any such presumption. This Court in the case of *Erie Railroad* v. *Tompkins*, 304 U. S. 64, 58 Supreme Court Reporter, 817, said, in its reference to the case of *Swift* v. *Tyson*, which had been followed for a number of years:

> "But law in the sense in which courts speak of it today does not exist without some definite authority behind it. The common law so far as it is enforced in a State, whether called common law or not, is not the common law generally but the law of that State existing by the authority of that State without regard to what it may have been in England or anywhere else. * * *
>
> The authority and only authority is the State, and if that be so, the voice adopted by the State as its own (whether it be of its Legislature or of its Supreme Court) should utter the last word."

"Thus the doctrine of Swift v. Tyson is, as Mr. Justice Holmes said, 'an unconstitutional assumption of powers by the Courts of the United States which no lapse of time or respectable array of opinion should make us hesitate to correct.' In disapproving that doctrine we do not hold unconstitutional section 34 of the Federal Judiciary Act of 1789 or any other act of Congress. We merely declare that in applying the doctrine this Court and the lower courts have invaded rights which in our opinion are reserved by the Constitution to the several states."

We cannot assume, under the circumstances, that Congress had knowledge of the cases referred to by the United States Court of Appeals, and further that the mere fact that Congress remained inactive on the question of garnishment in the District of Columbia, over a period of seventy years, could show that Congress thereby specifically intended that the District of Columbia would not be subject to the ordinary writs of garnishment, which it was taking advantage of in the Courts on its own behalf. The District of Columbia is one of the largest litigants in the Courts of the District of Columbia, and there is no sound reason of public policy or otherwise which would prevent it from being subject to garnishment covering the claims due from its employees.

A rather clear statement, relative to the question as to whether or not public policy requires that the salary of a municipal employee should be subject to garnishment proceedings, is set forth in the case of *Waterbury* v. *Board of Commissioners*, 10 Montana 515, 26 Pacific Reporter, 1002, which is as follows:

"Returning to the case at bar, we cannot agree that there is any reason why the great public duties of a county need be imperfectly performed, or that its business is in any danger of derangement, if it be compelled, by process of a court, to pay the salary of a servant to that servant's creditors. The county has no suit to defend, no counsel to employ, no witnesses to collect and pay. It has no burden cast upon it, and no

duty to perform, except to act as temporary stakeholder, to await the determination of a court, in an action in which the county has no interest.

The argument of public policy as to inconvenience to the county and its officers does not reach our mind with sufficient force to impair another view of law and of right that is recognized throughout the civilized world; that is, that debtors should pay their debts. This, of course, with the modification that the means of livelihood should be left to the debtor, which view is embodied in the laws of exemption from execution, which in this state are very liberal. The debtor's earnings for 30 days prior to the levy of a writ are exempt from seizure. The servant of the county is thus secured in his support, if he earns it, and the county is not liable to lose the services of competent officers. Indeed, it has never been observed that a county has difficulty in obtaining employees to do its work, and the county may surely obtain as good service from those who pay their debts as from those who avoid such payment, and are protected in the avoidance by the unsatisfying doctrine of public policy.

We conclude that there is no substantial argument from public policy which requires us to read the law as to garnishment of counties differently from what its letter seems to us to declare. Counties are not exempted from garnishment by statute. On the contrary, their liability to the process is within the letter of the law. We find nothing in the spirit or the doctrine of public policy which induces to add to or take from the letter. The judgment of the district court is reversed, and the cause is remanded, with directions to that court to enter judgment in favor of the plaintiff for $210.40, and interest at the rate of 10 per cent. per annum from the 12th day of March, 1888, and for the costs of this appeal."

In *Keifer etc.* v. *Reconstruction Finance Corporation,* 306 U. S. 381, 59 Sup. Ct. Rep. 516, the Court at Page 389 said:

"Congress may, of course, endow a governmental corporation with the government's immunity. But, always the question is: Has it done so?"

CONCLUSION.

It is respectfully submitted that Congress has not endowed the District of Columbia with any immunity from garnishment proceedings and that they are in the same category as a private individual, as this Court held in the case of *Metropolitan Railroad Co.* v. *District of Columbia, supra*, and that the decision of the United States Court of Appeals for the District of Columbia, deciding that the District of Columbia is not subject to the ordinary rules of garnishment, has not properly construed the Act of Congress creating the District of Columbia and has failed to give proper effect to the applicable decisions of this Court, which are set forth in this petition, and that this case is one calling for the exercise by this Court of its supervisory powers, in order that your petitioner may receive a fair and impartial decision and that to such an end a writ of certiorari should be granted and this Court should review the decision of the United States Court of Appeals for the District of Columbia and finally reverse it.

CORNELIUS H. DOHERTY,
Counsel for Petitioner.